



American Recovery and Reinvestment Act of 2009

Tax Credit Assistance Program (TCAP)

Policies and Procedures for Recycled Funds

May 2, 2012

Overview

The American Recovery and Reinvestment Act of 2009 (ARRA) created the Tax Credit Assistance Program (TCAP) to enhance the Section 42 Rental Housing Tax Credit program.

The Indiana Housing and Community Development Authority (IHCDA) will administer distribution of the state's \$38,048,333 in TCAP funding pursuant to these Development Selection Process and Criteria. IHCDA has begun to receive repayment of these funds and is now making them available to eligible developments.

I. Introduction

IHCDA will follow TCAP's overall purpose of creating and saving jobs in the near term as well as the long-term benefit of increasing the affordable housing supply by using the appropriation to start construction on shovel-ready developments. The TCAP program is expected to address funding gaps created by diminished investor demand for rental housing tax credits.

IHCDA intends to offer TCAP options to rental housing tax credit participants to enhance development strength and encourage investment from traditional syndicator and investor sources. IHCDA's ability to commit or close TCAP loans will be subject to funding availability and further guidance by HUD. IHCDA's program guidelines are subject to revision based on changing circumstances including additional federal guidance. IHCDA will announce and publish revisions using Real Estate Department Notices at <http://www.in.gov/ihcda/2520.htm>.

Terms used in the TCAP Criteria will have the same meaning as under IRS Code Section 42, federal regulations, the IHCDA's Qualified Allocation Plan (QAP), U.S. Department of Housing and Urban Development CPD Notice 09-03, and legal agreements between the Agency and Owners.

II. Threshold Eligibility

- A.** The development must have an award of 9% tax credits and require additional funding to be completed and placed in service. For purposes of the TCAP Criteria, "award" means one of the following:
 - i. A reservation of credits approved by IHCDA Board of Directors
 - ii. A fully executed Carryover Agreement
- B.** The development and Owner must be eligible under applicable federal requirements and meet or demonstrate the ability to meet applicable federal requirements.
- C.** The development must demonstrate that it continues to meet the QAP's Criteria for Approval including: marketability, overall financial feasibility, viability, experience of the development team, and no outstanding noncompliance issues for existing developments.

III. Eligible Uses of Funds



- A. TCAP funds may be used for capital investments in eligible rental housing tax credit developments. Capital investments means costs that are included in the eligible basis of a development under Section 42 of the IRC.
- B. The TCAP assistance provided to a development is subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by IHCDCA with respect to an award of rental housing tax credits to a development (i.e. as required under Section 42 of the IRC and its implementing regulations), and all other requirements of the Act.

IV. Application Process

- A. Eligible applicants may apply to IHCDCA on or after May 2, 2012.
- B. In order to be eligible for TCAP funding, owners must not undertake any choice-limiting activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds). This prohibition begins June 2, 2009 and includes leasing or disposition of real property and any activity that will result in a physical change to the property including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction. Performing a choice-limiting action prior to successful completion of the environmental clearance review may disqualify a project from receiving any federal funds, including TCAP.
- C. Owners will have to make achievable representations with regard to construction timing.
- D. Applicants are required to submit by the application deadline:
 - i. IHCDCA TCAP application
 - ii. Amount requested
 - iii. Revised sources and uses
 - iv. Detailed cost estimate for Davis-Bacon Act (Davis-Bacon)/federal financing compliance
 - v. Anticipated closing date
 - vi. Anticipated construction and completion schedule
 - vii. Explanation of the TCAP request in terms of filling the gap caused by syndicator/investor's as compared to the most recent rental housing tax credit application
 - viii. Documentation/Description of readiness criteria
- E. Applicant, Owner, Developer may not have an outstanding TCAP loan balance.
- F. The Development must meet one of the following Set-aside Categories:
 - 1. Rural
 - 2. Housing First

V. Selection Criteria

- A. IHCDCA will evaluate, prioritize and award TCAP funds to developments based on the following criteria:
 - i. Meet the all above eligibility requirements.



- ii. Owner's ability to close on all financing within 90 days of the TCAP award. IHCD's "Readiness Criteria" is determined by the following:
 - 1. The anticipated building timelines, including any challenges (e.g. extensive site work);
 - 2. Owner's and general contractor's recent history of timely construction;
 - 3. Completed Environmental Phase 1;
 - 4. Executed construction contract;
 - 5. Building permit or documentation of status approval;
 - 6. State approval of plans and specifications;
 - 7. Site Plan Approval by locality;
 - 8. Complete federal requirement, including environmental and historic review;
 - 9. Secure construction loan;
 - 10. Completed engineering and final construction drawings.
- iii. Owner's who do not close on their financing and TCAP award within 90 days of the TCAP award will be de-obligated and will not be eligible to reapply for TCAP funds until 60 days from the date of de-obligation.

B. IHCD will review each request based on the materials submitted and deny TCAP funding to those, in IHCD's sole judgment, unable to meet the criteria. IHCD's Executive Director maintains the right to commit TCAP funds due to unforeseen circumstances if such commitment will further the housing priorities stated in IHCD's QAP, and is determined to be in the best interest of the citizens of the State of Indiana. All TCAP award results will be posted on IHCD's website and be made available to the public.

VI. General Requirements

A. Underwriting Requirements

All underwriting requirements of the most recently accepted rental housing tax credit application shall remain in force, except those noted below.

- i. Cost estimated by applicant, and approved by IHCD, necessary to satisfy Davis-Bacon wages and other federal financing requirements.
- ii. Other changes to sources and uses mandated by an investor's commitment may be approved by IHCD if, in IHCD's sole judgment, they are deemed reasonable.

B. Post Award

- i. TCAP Funding Commitments "Commitment" will specify construction schedules. If an owner fails to expend TCAP funds according to the Commitment, IHCD will assess whether the delay will affect its ability to meet federal requirements. Depending on the circumstances, IHCD may allow the Owner an opportunity to remedy the situation.
- ii. If a construction delay will affect IHCD's ability to meet American Recovery and Reinvestment Act (ARRA) requirements IHCD will take necessary steps to redistribute TCAP funds to a more deserving development, including the following:



1. De-obligating the remaining TCAP funds;
 2. Initiating foreclosure proceedings to recoup amounts already expended, and;
 3. Redistributing the de-obligated and/or recouped TCAP funds to other eligible developments based on criteria in Section V
- iii. Remedies for loan default or other noncompliance may include IHCD A having the ability to do some or all of the following:
1. Declare recipients not in good standing,
 2. In conjunction with the equity investor, change the structure of the ownership entity, including adding or removing members/partners
 3. In conjunction with the equity investor, replace the management company,
 4. Initiate foreclosure proceedings, and
 5. Other remedies as determined by IHCD A
 6. Owners will record a thirty (30) year Lien and Restrictive Covenant Agreement

C. Loan Terms

- i. TCAP funds can be used as a construction loan and/or bridge loan, .
- ii. TCAP funding Construction Loan Terms will be for the financing of development cost related to construction or rehabilitation. Loans will carry an interest rate of 0% amortized over thirty (30) years with a term not to exceed twenty-four (24) months.
- iii. Construction financing will have full recourse against the borrower.
- iv. A portion of the TCAP construction loan may remain in the development as a Bridge loan.
- v. IHCD A will agree to subordinate the TCAP loan in priority to the lender in first lien position.
- vi. IHCD A shall disburse TCAP funds at closing or during construction as needed upon receiving evidence that costs have been incurred.

D. Development Fee

- i. The inclusion of development fees must be supported by a development services agreement that recites in reasonable detail the development services provided, sets forth a schedule for accrual of the development fee as specified benchmarks are achieved, and clearly identifies the terms of payment of the fee.
- ii. The inclusion of other fees to service providers must be supported by evidence that the services: (A) were actually performed and (B) were not duplicative of the services for which the development fee is being paid (or for which, in a customary transaction, the development fee would be paid).
- iii. Other fees will not be paid to entities related to the General Partner or the Developer except where the General Contractor is a related party and is entitled to general overhead, builder profit, and general requirements.
- iv. The cash portion of the developer fee (50%) will be paid as follows:
 1. 30% at close of Loan Money
 2. 10% during construction, paid pro-rata with construction completion



3. 30% at Construction Completion
4. 30% at Stabilization and Final Inspection
- v. The Development will be subject to the following deferred developer fee requirements:
 1. 50% of the developer fee will be deferred and will be repaid out of available cash flow.

E. Affordability Period

- i. 30 years
- ii. Owner must agree to waive the Section 42 Qualified Contract Provision

VII. Reporting and Compliance

- A.** Owners will report to IHCD, no less than quarterly on the day preceding the end of such quarter:
- i. Description of the development,
 - ii. Evaluation of the completion status,
 - iii. An estimate of the number of jobs created and the number of jobs retained,
 - iv. Any other information necessary for IHCD's federal reporting requirements,
 - v. All information applicable to HOME Investment Partnership Act funding,
 - vi. Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office Management and Budget.
- B.** Owners will follow IHCD's processes and procedures applicable to IRS Code Section 42 developments with an investor and any additional compliance requirements made necessary due to TCAP funding.
- C.** Non-compliance of award terms will be subject to recapture under the terms from the U.S. Treasury.
- D.** Non-compliance of award terms can negatively affect future LIHTC reservations from IHCD.

VIII. TCAP Written Agreements and Disbursements

IHCD must execute a legally binding written agreement with each project owner. The written agreement will set forth all of the TCAP program and crosscutting federal grant requirements applicable to the funding, and must make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors, e.g., a covenant.

The written agreement for a project cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved.



The TCAP written agreement must be signed and dated by IHCD and the project owner before any TCAP funds are disbursed. Federal funds cannot be drawn from the U.S. Treasury in advance of the need to pay an eligible cost. Consequently, TCAP funds cannot be drawn from the U.S. Treasury and placed in escrow or advanced in lump sums to project owners. Once funds are drawn from IHCD's U.S. Treasury account, they must be expended for an eligible TCAP cost within 3 days.

IX. Crossing Cutting Federal Requirements

Owners and developments must comply with all of the following:

A. Environmental Review

A complete environmental review must be performed in order to meet the requirements of the National Environmental Policy Act (NEPA). This review is not the same as a Phase I Environmental Assessment Review. The applicant is required to complete the environmental review process and submit the environmental review record to the appropriate IHCD Community Development Representative on or before the application submission.

The Environmental Review User Guide and forms may be downloaded from the following link:
http://www.in.gov/ihcda/files/Environmental_Review_User_Guide.pdf

B. Historic Review

Applicants must submit documentation to the appropriate IHCD Community Development Representative requesting that IHCD initiate the historic review process on or before the application submission. Required documentation includes:

- i. A description of the undertaking.
- ii. A description of the Federal involvement – use of any other federal funds.
- iii. Area of potential effect – shown via maps on Interim reports or clear map(s).
- iv. Photographs, maps, drawings, etc. – color photos, topographic maps, architectural drawings.
- v. Description of steps to identify historic properties and information pursuant to Sec. 800.4(b)
- vi. Description of the basis for the determination of requested funding.
On average, a historic review may take up to 90 days or more to complete. If the development involves an historic structure or construction on a site of known archaeological significance, approval may take much longer or construction may be prohibited entirely.

The Historic Review Handbook and forms may be downloaded from the following link:
[http://www.in.gov/ihcda/files/Historic_Review_Manual_2008-2009_\(AS_revised_9.5.08\).doc](http://www.in.gov/ihcda/files/Historic_Review_Manual_2008-2009_(AS_revised_9.5.08).doc)



C. **Construction Contract Requirements**

To meet the requirements of OMB Circular A-110, for any construction contract exceeding \$100,000, IHCDAs recipients must do one of the following:

i. Bonding Requirements

1. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. Where bonds are required, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR parts 223, "Surety Companies Doing Business with the United States."

OR

ii. Irrevocable Letter of Credit:

In lieu of acquiring the payment and performance bonds, IHCDAs will accept an irrevocable line of credit listing IHCDAs as the sole beneficiary and equal to (a) the greater of the IHCDAs award amount or (b) 25% of the total construction contract. The letter of credit must be issued for the entire construction period plus one (1) year following construction completion.

D. Davis-Bacon Labor Standards:

- i. Any contract for the construction or rehabilitation of affordable housing must contain a provision requiring that wages paid to all laborers and mechanics be not less than the prevailing wage of the locality, as predetermined by the Secretary of Labor. In addition, such contracts are subject to the overtime provisions of the Contract Work Hours and Safety Act.
- ii. Davis-Bacon developments of five or more stories are subject to commercial wage rates. Davis-Bacon developments of less than five stories that involve significant commercial development may also be subject to the commercial wages. All other Davis-Bacon



developments will be subject to residential wage rates, which may be significantly lower than commercial wage rates.

Any development that is subject to Davis-Bacon wage rates is required to get an initial wage decision from IHCD prior to application submission. For further instruction, contact your Community Development Representative.

E. Affirmative Marketing:

- i. Developments must utilize IHCD's Affirmative Marketing Procedures in soliciting renters, determining their eligibility, and concluding all transactions. IHCD's procedures have been established to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability.
- ii. Applicants must identify the market that is least likely to apply for the assisted units. Upon receipt of an award, the organization must implement marketing procedures to reach those persons least likely to apply. Additionally, recipients, must annually re-evaluate the market least likely to apply and target marketing efforts appropriately.
- iii. Examples of marketing outreach efforts include: advertising in local media or placing flyers in community centers, houses of worships, social service offices, etc.
- iv. Applicants must complete the Affirmative Marketing Procedures and Certification form located in the HOME Section and include an original signature.

F. Site and Neighborhood Standards:

- i. IHCD promotes housing opportunities and provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, E.O. 11063, and HUD regulations issued pursuant thereto. For new construction of assisted rental units, the applicant must demonstrate that the proposed development meets the site and neighborhood standards as given at 24 CFR 983.6(b) by completing the appropriate form in the HOME Section.

G. Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).

H. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.

I. The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."



- J. “Anti-Lobbying” Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.)
- i. This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.
- K. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 “Government-Wide Requirements for Drug-Free Workplace (Grants)”.)
- L. Lead Based Paint Requirements:
- i. Recipients of an award are subject to the HUD lead based paint requirements found in 24 CFR Part 35. The chart below summarizes the requirement based on the amount of federal funds subsidizing each assisted unit. For additional instructions, contact your IHCD Community Development Representative.

Federal Funds Amount Per Unit:	Rehabilitation			Acquisition without Rehabilitation
	≤\$5,000	\$5,000-\$25,000	>\$25,000	
Approach # to Lead Hazard Evaluation & Reduction (see detail in following chart)	Approach #1 Do no harm	Approach #3 Identify & control lead hazards	Approach #4 Identify & abate lead hazards	Approach #2 Identify & stabilize deteriorated paint
Notification of Tenants	Yes	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing of surface to be disturbed by rehabilitation	Paint Testing of surface to be disturbed by rehabilitation & Risk Assessment	Paint Testing of surface to be disturbed by rehabilitation & Risk Assessment	Visual Assessment



Lead Hazard Reduction	Repair surfaces disturbed during rehabilitation. Safe work practices & clearance of work site	Interim controls Safe work practices & clearance of unit	Abatement (Interim Controls on exterior surfaces not disturbed by rehabilitation) Safe work practices & clearance of unit	Paint Stabilization Safe work practices & clearance of unit
Ongoing Maintenance	For rental only	For rental only	For rental only	Yes (if ongoing relationship)
EIBLL Requirements	No	No	No	No
Options	Presume lead-based paint & use safe work practices on all surfaces	Presume lead-based paint &/or hazards & use standard treatments	Presume lead-based paint &/or hazards & abate all applicable surfaces	Test deteriorated paint. Use safe work practices only on lead-based paint surfaces.

M. Four Approaches To Implementing Lead Hazard Evaluation & Reduction:

Approach 1. Do No Harm		
<u>Lead Hazard Evaluation</u>	<u>Lead Hazard Reduction</u>	<u>Options</u>
Paint testing performed on surfaces to be disturbed	Repair surfaces disturbed during work. Safe work practices used when working on areas identified as lead-based paint. Clearance performed on work	Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.



	site.	
Approach 2. Identify and Stabilize Deteriorated Paint		
<u>Lead Hazard Evaluation</u>	<u>Lead Hazard Reduction</u>	<u>Options</u>
Visual assessment performed to identify deteriorated paint.	Paint stabilization of identified deteriorated paint. Safe work practices used. Clearance performed unit-wide.	Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.
Approach 3. Identify and Control Lead Hazards		
<u>Lead Hazard Evaluation</u>	<u>Lead Hazard Reduction</u>	<u>Options</u>
Paint testing performed on surfaces to be disturbed. Risk assessment performed on entire dwelling.	Interim controls performed on identified hazards. Safe work practices used. Clearance performed unit-wide.	Presume lead based paint &/or lead based paint hazards are present & perform standard treatments .
Approach 4. Identify and Abate Lead Hazards		
<u>Lead Hazard Evaluation</u>	<u>Lead Hazard Reduction</u>	<u>Options</u>
Paint testing performed on surfaces to be disturbed. Risk assessment performed on entire dwelling.	Abatement performed on identified hazards. Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation. Safe work practices used.	Presume lead-based paint &/or lead-based paint hazards are present & perform abatement on all applicable surfaces- deteriorated, impact, friction, chewable surfaces, and surfaces to



	Clearance performed unit wide.	be disturbed.
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N. Accessibility:

- i. The Federal Fair Housing Act Amendments of 1988 establishes the following seven design standards for all newly constructed multi-family housing of four or more units ready for first occupancy on or after March 13, 1991 (See 24 CFR 100.205). The housing is not covered if the last building permit was issued prior to June 15, 1990, or if the site is determined to be impractical.
 1. At least one building entrance must be on an accessible route.
 2. All public and common areas must be readily accessible to and usable by people with disabilities.
 3. All doors providing passage into and within all premises must be sufficiently wide for use by persons in wheelchairs.
- ii. Additionally, all ground floor units and all units on floors served by elevators must have:
 1. An accessible route into and through the dwelling.
 2. Accessible light switches, electrical outlets, thermostats, and other environmental controls.
 3. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, and shower, when needed.
 4. Kitchens and bathrooms configured so that a person using a wheelchair can maneuver about the space.
- iii. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in the operation of programs receiving Federal financial assistance. HUD regulations implementing Section 504 contain accessibility requirements for new construction and rehabilitation of housing as well as requirements for ensuring that the programs themselves are operated in a manner that is accessible to and usable by persons with disabilities. (See 24 CFR Part 8). Multifamily housing developments are defined at 24 CFR 8.3 as developments "containing five or more dwelling units."
- iv. New Construction - HUD regulations implementing Section 504 at 24 CFR 8.22(a) require that new construction of multifamily developments be designed and constructed to be readily accessible to and usable by persons with disabilities. Both the individual units and the common areas in the building must be accessible. For new construction of multifamily rental developments, a minimum of five percent (5%) of the dwelling units in the development (but not less than one unit) must be accessible to individuals with mobility impairments. An additional two percent (2%) of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e. hearing or vision impairments), unless HUD prescribes a higher number pursuant to 24 CFR 8.22(c).
- v. Rehabilitation - Substantial Alterations - Section 504 requires that if alterations are undertaken to a housing development that has 15 or more units, and the rehabilitation



costs will be 75 percent or more of the replacement cost of the completed facility, then such developments are considered to have undergone "substantial alterations" (24 CFR 8.23 (a)). For substantial alterations of multifamily rental housing, the accessibility requirements contained in 24 CFR 8.22 must be followed -- a minimum of five percent (5%) of the dwelling units in the development (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional two percent (2%), at a minimum (but not less than one unit), must be accessible to individuals with sensory impairments.

- vi. Rehabilitation - Other Alterations - When other alterations that do not meet the regulatory definition of substantial alterations are undertaken in multifamily rental housing developments of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of five percent (5%) of the dwelling units (but not less than one unit) are accessible to people with mobility impairments, unless HUD prescribes a higher number pursuant to 24 CFR 8.23(b)(2). If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, then the entire dwelling unit shall be made accessible. For this category of rehabilitation the additional two percent (2%) of the dwelling units requirement for individuals with sensory impairments does not apply. Alterations to common spaces must, to the maximum extent feasible, make those areas accessible. A recipient is not required to make a dwelling unit, common area, facility or element accessible, if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing development. (24 CFR 8.23(b)) Therefore, recipients are required to provide access in covered alterations up to the point of being infeasible or an undue financial and administrative burden.
- vii. Accessibility Standards - Dwelling units designed and constructed in accordance with the Uniform Federal Accessibility Standards (UFAS) will be deemed to comply with the Section 504 regulation. For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339. Accessible units must be, to the maximum extent feasible, distributed throughout the development and sites, and must be available in a sufficient range of sizes and amenities so as not to limit choice.
 - 1. For further guidance regarding accessibility requirements, refer to HUD CPD Notice 00-09.
 - 2. This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

O. OMB Regulations and Circulars (2 CFR Part 2424 "Non-procurement Debarment and Suspension.")

